

**RULES
OF
TENNESSEE MASSAGE LICENSURE BOARD**

**CHAPTER 0870-1
GENERAL RULES GOVERNING LICENSED MASSAGE THERAPISTS AND ESTABLISHMENTS**

TABLE OF CONTENTS

0870-1-.01	Definitions	0870-1-.12	Continuing Education
0870-1-.02	Practice Standards and Inspection of Establishments	0870-1-.13	Disciplinary Grounds, Actions, and Civil Penalties
0870-1-.03	Necessity of Licensure	0870-1-.14	License
0870-1-.04	Licensure Process	0870-1-.15	Change of Name and/or Address and Screening Panels
0870-1-.05	Establishment Licensure Process	0870-1-.17	Advertising
0870-1-.06	Fees	0870-1-.18	Consumer Right-To-Know Requirements
0870-1-.07	Application Review, Approval, and Denial	0870-1-.19	Professional Ethical Standards
0870-1-.08	Examination		
0870-1-.09	Licensure Renewal		
0870-1-.10	Repealed		
0870-1-.11	Retirement, Reinstatement, Inactivation, and Reactivation of Licensure		

0870-1-.01 DEFINITIONS. As used in these rules, the following terms and acronyms shall have the following meaning ascribed to them:

- (1) Applicant - Any individual seeking licensure who has submitted an official application and paid the application fee.
- (2) Application - As used in this rule, "application" means the application form approved by the Board and shall also include, when applicable, the following: Current signed, passport type photograph, official transcript from educational institution(s), verification of successful completion of the N.C.B.T.M.B.'s National Certification Examination or any other Board-approved examination, two (2) original letters of professional recommendation, and certification/licensure from other state boards.
- (3) Board - The Tennessee Massage Licensure Board.
- (4) Board Administrative Office - The office of the administrator assigned to the Board located at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243.
- (5) Board's Consultant - Any person who has received a delegation of authority from the Board to perform Board functions subject to review and ratification by the Board where provided by these rules.
- (6) Client - Means any person with whom the massage therapist has an agreement to provide massage therapy.
- (7) Closed Files - An administrative action which renders an incomplete or denied file inactive.
- (8) Department - Tennessee Department of Health.
- (9) Division - The Division of Health Related Boards, Tennessee Department of Health, from which the Board receives administrative support.
- (10) Establishment - Any location, or portion thereof, which advertises and/or provides to the public massage therapy services on the premises for compensation. Any licensed health care facility or any health care professional's office wherein massage therapy services are

(Rule 0870-1-.01, continued)

not advertised or provided except on an occasional outcall basis is not an establishment for purposes of this rule. Any location within a licensed health care facility or any health care professional's office which is dedicated to and maintained for the use of a massage therapist who performs occasional massage therapy services to the patients of the facility is a massage establishment for purposes of licensure under these rules and the portions of the facility or office wherein massage therapy services are provided must be in compliance with the standards established in rule 0870-1-.02. The term "occasional" as used in this rule means not more than twice in a one (1) week period.

- (11) He/she Him/her - When "he" appears in the text of these rules, the word represents both the feminine and masculine genders.
- (12) HRB - When the acronym HRB appears in the text of these rules, HRB represents the Division of Health Related Boards.
- (13) Licensee. Any person holding a license to practice massage therapy or as a massage establishment in the State of Tennessee. Where applicable this shall include partnerships and/or corporation.
- (14) Massage/bodywork/somatic – The manipulation of the soft tissues of the body with the intention of positively affecting the health and well being of the client.
- (15) N.C.B.T.M.B. - The National Certification Board for Therapeutic Massage and Bodywork.
- (16) National Certification Examination - The examination required for national certification from the N.C.B.T.M.B.
- (17) Outcall – The provision of massage services outside of an "establishment" as defined by this rule and in a location at which there is neither the regular provision of nor the advertising of such services. For purposes of this definition, the term "regular" means more than twice in a one (1) week period.
- (18) Person - Any individual, firm, corporation, partnership, organization, or body politic.
- (19) Physician - Any physician licensed pursuant to T.C.A. Title 63, Chapters 6 or 9.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-102, 63-18-104, 63-18-105 and 63-18-108, and 63-18-111.

Administrative History: Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed November 26, 1996; effective February 9, 1997. Amendment filed November 12, 1999; effective January 26, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed April 17, 2003; effective July 1, 2003. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006.

0870-1-.02 PRACTICE STANDARDS AND INSPECTION OF ESTABLISHMENTS.

- (1) Policy Statement - The scope of the practice of massage therapy in Tennessee is broadly defined and includes many aspects which if not particularly regulated could lead to serious ramifications- for the consuming public. This rule is to designate specific areas in the practice for regulation, the violation of which may result in disciplinary action or denial of licensure pursuant to T.C.A. § 63-18-108.
- (2) Standards for Massage Establishments, Personnel, Equipment, Linens, and Supplies
 - (a) Massage Establishments Standards - The holder of a massage establishment license must comply with all of the following:

(Rule 0870-1-.02, continued)

1. Contain adequate waiting area for clients.
 2. Maintain properly installed smoke detector and fire extinguisher.
 3. Massage therapy may be conducted only in rooms which are adequately lighted and ventilated, and so constructed that they can be kept clean. Floors, walls, ceilings and windows must remain free of dust, and other unclean substances.
 4. Rest Rooms. Every establishment shall contain rest room facilities; including at least one water flushed toilet, equipped with toilet tissue, from which the waste water shall be discharged into a sewage system acceptable to the Department of Environment. Establishments located in buildings housing multiple businesses under one roof such as arcades, shopping malls, terminals, hotels, etc., may substitute centralized toilet facilities. Such central facilities shall be within three hundred (300) feet of the massage establishment.
 - (i) Hand cleansing capabilities for the therapists must be located within 20 feet of the treatment area, each establishment shall have at least one sink with hot and cold running water within 300 feet of the treatment area; and
 - (ii) Shall be equipped with soap dispenser with soap or other hand cleaning materials, clean towels or other hand-drying device such as a wall-mounted electric blow dryer, and waste receptacle.
 - (iii) Such facilities and all of the foregoing fixtures and components shall be kept clean, in good repair, well-lighted, adequately ventilated, and free of pests.
 - (iv) Maintain toilet facilities in a common area of the establishment.
 5. Reasonable effort for sanitation shall be maintained for temporary locations such as athletic events or public service fund raisers in temporary venues.
 6. Provide for safe and unobstructed human passage in the public areas of the premises; provide for removal of garbage and refuse; and provide for safe storage or removal of flammable and hazardous materials.
- (b) Personnel
1. All persons who perform massage therapy in a massage establishment must be licensed by the Board pursuant to rule 0870-1-.04.
 2. A license issued to an individual who owns a massage establishment is not transferable and is subject to revocation or other disciplinary actions upon failure of any inspection or for refusal to allow inspection by the Board's authorized representatives.
 3. Notwithstanding the above, a licensed massage establishment may change locations, pursuant to rule 0870-1-.15 (3).
 4. The person to whom the establishment license is issued shall be responsible for maintaining all parts thereof in a sanitary condition at all times, and for otherwise insuring that such establishment is operated in compliance with this Chapter.

(Rule 0870-1-.02, continued)

However, this rule shall not relieve any individual therapist of responsibility for the sanitary conditions of the space or equipment used in their practice.

(c) Equipment

1. Maintain all equipment and supplies used to perform massage services on the premises in a safe and sanitary condition, including the regular application of cleansers and bactericidal agents to the massage table. "Regular application," where used herein, means a thorough cleansing of the massage table at least one time a day or whenever oils or other substances visibly accumulate on the massage table surface.
2. If equipped with a whirlpool bath, sauna, steam cabinet and/or steam room, maintain adequate and clean shower facilities on the premises.

(d) Linens and Supplies

1. Each client shall receive a separate, clean covering for use on the message table, i.e. sheets or towels.
2. Launder or sanitize, before reuse, all materials, equipment and supplies utilized for each client.

(3) Draping

- (a) Each massage establishment shall maintain a sufficient supply of clean drapes, for the purpose of draping each client while the client is being massaged. As used herein "drapes" means towels, gowns, or sheets.
- (b) Before proceeding with a massage to the client, each massage therapist shall have explained to the client expected draping techniques and provide the client a clean drape large enough for the purpose of draping the buttocks and genitalia and in the case of a female client the breasts.

(4) Sexual Activity and Other Therapeutic Treatments Prohibited

- (a) As used in this rule, "sexual activity" means any direct or indirect physical contact or communication by any person or between persons which is intended to erotically stimulate either person or both or which is likely to cause such stimulation and include sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse. For purposes of this rule part, masturbation means the manipulation of any body tissue with the intent to cause sexual arousal. As used, herein, sexual activity can involve the use of any device or object or conversation and is not dependent on whether penetration, orgasm, or ejaculation has occurred.
- (b) Sexual activity by any person or persons in any massage establishment is absolutely prohibited.
- (c) No massage establishment owner shall engage in or permit any person or persons to engage in sexual activity in such owner's massage establishment or use such establishment to make arrangements to engage in sexual activity in any other place.
- (d) No licensed massage therapist shall use the therapist-client relationship to engage in sexual activity with any client or to make arrangements to engage in sexual activity with any client.

(Rule 0870-1-.02, continued)

- (e) Prohibited therapeutic treatments not within the scope of practice of massage therapists include:
 - 1. therapeutic treatments to the anus and anal canal, including, but not limited to colonic irrigations and enemas; and
 - 2. therapeutic cross-gender breast massage; and
 - 3. therapeutic vaginal massage.
 - (f) Engaging in any of the activities or treatments described in this paragraph shall subject the licensee to disciplinary action, as provided in rule 0870-1-.13.
- (5) Inspection of Establishments - Licensed massage therapy establishments and applicants are subject to periodic inspections by the Board or its authorized representative(s) during business hours. When scheduling inspections, the inspector shall attempt to accommodate the client appointment schedule of the establishment.
- (a) The purpose of inspection of establishments is to verify compliance with the practice standards of this rule as provided in paragraphs (2), (3), and (4), and the display of license requirements as provided in paragraph (1) of Rule 0870-1-.14.
 - (b) The establishment license may be subject to disciplinary action, pursuant to Rule 0870-1-.13, when the inspection reveals that the establishment does not meet the standards and requirements set by this rule or when the inspection reveals that the license of any employee has been suspended or revoked.
 - (c) Reinspection - When an establishment does not pass inspection, the establishment shall submit an application for reinspection.
 - 1. The inspector shall provide the establishment with an application for reinspection.
 - 2. The application shall be submitted to the Board's administrative office within thirty (30) days after the failed inspection.
 - 3. The reinspection fee shall be submitted with the application, pursuant to Rule 0870-1-.06.
 - 4. The Board's Unit Director shall cause to have the reinspection scheduled.
 - (d) Failure to Allow or Appear for Inspection - An establishment whose owner or operator fails to allow an inspection to be scheduled shall be deemed to have failed the inspection. An establishment whose owner or operator does not appear for his/her scheduled inspection shall be deemed to have failed the inspection unless the Board's administrative office or the Board's authorized representative is notified at least twenty-four (24) hours prior to the scheduled appointment time for inspection. In either circumstance, a subsequent scheduled inspection shall be considered as a reinspection. When a reinspection is necessitated as a result of either circumstance, the following shall occur:
 - 1. The Board's administrative office shall provide the establishment with an application for reinspection.

(Rule 0870-1-.02, continued)

2. The establishment's owner or operator shall submit the reinspection application to the Board's administrative office within ten (10) days after the establishment received the application.
3. The reinspection fee shall be submitted with the application, pursuant to Rule 0870-1-.06.
4. The Board's Unit Director shall cause to have the reinspection scheduled.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-18-104, 63-18-105, 63-18-106, 63-18-108, and 63-18-111.

Administrative History: Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed November 26, 1996; effective February 9, 1997. Amendment filed August 10, 1999; effective October 24, 1999. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed November 27, 2000; effective February 10, 2001. Amendment filed October 4, 2004; effective December 18, 2004. Amendment filed December 29, 2004; effective March 14, 2005. Amendments filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006.

0870-1-.03 NECESSITY OF LICENSURE.

- (1) It is unlawful for any person who is not licensed in the manner prescribed in Title 63 Chapter 18 of the Tennessee Code Annotated to present himself or his establishment as a licensed massage therapist or a licensed massage therapy establishment or to hold himself or his establishment out to the public as being licensed by using a title on signs, mailboxes, address plates, stationery, announcements, telephone listings, calling cards, or other instruments of professional identification.
- (2) Massage therapy is one of the healing arts and as such the practice is restricted to those persons issued a credential by this Board. Persons engaging in the practice of massage therapy without being licensed or expressly exempted by the laws are in violation of T.C.A. §§ 63-1-123 and 63-18-104.
- (3) Use of Titles - Any person who possesses a valid, current and active license issued by the Board that has not been suspended or revoked has the right to use the titles "Massage Therapist (M.T.)" or "Licensed Massage Therapist (L.M.T.)" and to practice as a massage therapist, as defined in T.C.A. § 63-18-102. Any person licensed by the Board to whom this rule applies must use one of the titles authorized by this rule in every advertisement he or she publishes. Failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the massage therapist to disciplinary action pursuant to T.C.A. §§ 63-18-104(c) and 63-18-108(5), and rule 0870-1-.19 (1) (q).
- (4) Students may not hold themselves out as licensed massage therapists until such time as they are licensed.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-123, 63-1-145, 63-1-146, 63-18-102, 63-18-104, 63-18-105, 63-18-108, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed April 30, 2008; effective July 14, 2008.

0870-1-.04 LICENSURE PROCESS.

- (1) Massage Therapist. To practice massage therapy in Tennessee a person must possess a lawfully issued license from the Board. The process for obtaining a license is as follows:
 - (a) An application packet shall be requested from the Board's Administrative Office.

(Rule 0870-1-.04, continued)

- (b) An applicant shall respond truthfully and completely to every question or request for information contained in the application form. The applicant shall submit the application along with all required documentation and fees to the Board Administrative Office. It is the intent of this rule that activities necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed as close to simultaneously as possible.
- (c) Applications will be accepted throughout the year. Supporting documentation required by the application or these rules must be timely received in the Board Administrative Office as provided in rule 0870-1-.07 (3) or the file will be closed.
- (d) An applicant shall submit a certified copy of his birth certificate or its equivalent which indicates that the applicant is, at the time of application, at least eighteen (18) years of age.
- (e) An applicant shall attach to his application a "passport" type photograph taken within the preceding twelve (12) months. The photo must be affixed to the proper page of the application.
- (f) It is the applicant's responsibility to do the following in a timely manner:
 - 1. Request that a transcript from one (1) or more post secondary academic institution(s) approved by the Tennessee Higher Education Commission or its equivalent in another state(s), or approved by the Tennessee Board of Regents, be submitted directly from the institution(s) to the Board Administrative Office. The transcript must show that the applicant has successfully completed a massage, bodywork, and/or somatic therapy curriculum(s) consisting of no less than five hundred (500) classroom hours and carry the official seal of the institution(s).
 - (i) Two hundred (200) classroom hours of the five hundred (500) classroom hour requirement shall consist of sciences including, but not limited to, anatomy, physiology-Western and/or/Eastern, kinesiology, pathology, HIV/AIDS, and blood-borne pathogens, and hygiene (including standard precautions). Other sciences related to the human body may be included with Board approval.
 - (ii) Two hundred (200) classroom hours of the five hundred classroom (500) hour requirement shall consist of basic massage theory and practice including, but not limited to, history, benefits, indications, contraindications, demonstration and supervised practice, client assessment/evaluation, soft tissue manipulations including: gliding, kneading, friction, compression, vibration, percussion, stretching, joint movements, draping, positioning, turning, feedback, charting/documentation, proper body mechanics, and self-care.
 - (iii) Eighty-five (85) classroom hours of the five hundred (500) classroom hour requirement shall consist of related subjects including, but not limited to, business standards of practice, communication skills, CPR/First Aid, the Americans with Disabilities Act, referral methods, specialized populations, and specialized and adjunct therapies/modalities (including hydrotherapy).
 - (iv) Ten (10) classroom hours of the five hundred (500) classroom hour requirement shall consist of ethics instruction.

(Rule 0870-1-.04, continued)

- (v) Five (5) classroom hours of the five hundred (500) classroom hour requirement shall consist of instruction regarding Tennessee massage statutes and regulations; and
 - 2. Request that verification of having successfully completed the National Certification Examination, as provided in Rule 0870-1-.08, be submitted directly from the N.C.B.T.M.B. or its successor organization to the Board Administrative Office; or
 - 3. Request that verification of having successfully completed a Board-approved examination, as provided in Rule 0870-1-.08, be submitted directly from such exam's testing agency to the Board Administrative Office.
- (g) An applicant shall have submitted evidence of good moral character. Such evidence shall consist of two (2) recent (within the preceding 12 months) original letters from health care professionals, attesting to the applicant's personal character and professional ethics.
- (h) An applicant shall disclose the circumstances surrounding any of the following:
- 1. Conviction of any criminal offense of any country, state or municipality except minor traffic offenses, conviction for any sexual related offense, and conviction for prostitution or sexual misconduct offenses. A conviction for prostitution or sexual misconduct offenses shall disqualify an applicant from receiving a license. A conviction for a felony under the laws of Tennessee may disqualify an applicant from receiving a license.
 - 2. The denial of professional licensure/certification application by any other state or the discipline of licensure/certification in any state.
 - 3. Loss or restriction of licensure/certification.
 - 4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory common or case law.
 - 5. Failure of any professional licensure or certification examination.
- (i) An applicant shall cause to be submitted to the Board's Administrative Office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.
- (j) If an applicant holds or has ever held a license/certificate to practice any profession in any other state, the applicant shall cause to be submitted the equivalent of a Tennessee Certificate of Endorsement (verification of licensure/certification) from each such licensing board which indicates the applicant holds or held an active license/certificate and whether it is presently in good standing or was in good standing at the time it became inactive.
- (k) An applicant shall submit the application fee and state regulatory fee as provided in rule 0870-1-.06.

(Rule 0870-1-.04, continued)

- (l) When necessary, all required documents shall be translated into English and such translation and original documents certified as to authenticity by the issuing source. Both versions must be submitted.
 - (m) Reciprocity Licensure
 - 1. Applicants who are licensed or have been licensed in another state as a massage therapist must submit along with their applications copies of the statutes and rules governing the licensure/certification qualifications and process from all states in which they currently or previously have held licensure/certification. The Board will determine in its sole discretion whether the licensure/certification standards of any other state are as stringent as those of Tennessee for purposes of granting licensure under this rule. Unless an applicant makes use of the provisions in part 2. of this subparagraph, no applicant shall be approved for licensure without successfully completing the five (5) classroom hours of instruction regarding Tennessee massage statutes and regulations as required in subpart (1) (f) 1. (v).
 - 2. Applicants can avoid the requirements of part (1) (f) 1. by having N.C.B.T.M.B. submit directly to the Board Administrative Office proof of their certification for the five (5) year period immediately preceding application for licensure and by submitting documentation satisfactory to the Board that they have engaged in the practice of massage therapy in another state for the five (5) year period immediately preceding application for licensure, and who either:
 - (i) have successfully completed the examination requirements of rule 0870-1-.08 and have met the education requirements set forth in part (1) (f) 1. but are unable, because the educational institution either was not state-approved or is no longer in existence, to have a transcript be submitted directly from the institution(s) to the Board Administrative Office; or
 - (ii) have graduated from a qualified massage school or course prior to October 1, 1995 and have caused a transcript documenting the graduation to be submitted directly from the institution(s) to the Board Administrative Office.
 - (n) All applications shall be sworn to and signed by the applicant and notarized.
 - (o) All documents submitted for licensure purposes become the property of the State of Tennessee and will not be returned.
 - (p) The application form is not acceptable if any portion has been executed and dated prior to one (1) year before receipt by the Board Administrative Office. As used in this rule, "application" means the application form approved by the Board and all required documents.
- (2) Application review and all licensure decisions shall be governed by rule 0870-1-.07.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-18-104, 63-18-105, 63-18-108, 63-18-111, 63-18-112, and 63-18-116. **Administrative History:** Original rule filed March 25, 1996; effective June 8, 1996. Repeal and new rule filed November 13, 1996; effective January 27, 1997. Amendment filed August 21, 1998; effective November 4, 1998. Amendment filed August 10, 1999; effective October 24, 1999. Amendment filed November 12, 1999; effective January 26, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed September 17, 2002; effective December 1, 2002. Amendment filed April 17, 2003; effective July 1, 2003. Amendment filed June 15, 2004; effective August 29, 2004. Amendment filed October 4, 2004; effective December

(Rule 0870-1-.04, continued)

18, 2004. Amendments filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed May 10, 2007; effective July 24, 2007.

0870-1-.05 ESTABLISHMENT LICENSURE PROCESS. Any massage therapy establishment, unless exempted by any provision of T.C.A. §63-18-110, must be licensed by the Board. The process for obtaining a license is as follows:

- (1) An application packet shall be requested from the Board's Administrative Office.
- (2) An applicant shall respond truthfully and completely to every question or request for information contained in the application form. The applicant shall submit the application along with all required documentation and fees to the Board Administrative Office. It is the intent of this rule that activities necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed as close to simultaneously as possible.
- (3) "Applicant," for purposes of this rule shall mean the person under whose name the massage establishment shall be licensed. The applicant need not be licensed as a massage therapist. However, all persons employed to or who are providing massage therapy on the premises must be licensed by complying with the provisions of rule 0870-1-.04, or no establishment license can be issued or a previously issued license shall be processed for revocation.
- (4) Except for applicants who are corporations doing business in Tennessee, every applicant shall submit a certified copy or a notarized photocopy of his/her birth certificate or its equivalent which indicates that the applicant is at least eighteen (18) years of age at the time of application.
- (5) The applicant shall disclose the names, addresses and telephone numbers of all persons who have any ownership interest in or who receive any disbursement of the income, other than employment salary, from the massage establishment.
 - (a) The applicant shall attach to the application copies of the current licenses of all massage therapists performing massage therapy at that establishment.
 - (b) The requirements of paragraph (5) and subparagraph (a) are continuing ones and must be updated within thirty (30) days of any change.
- (6) Except for applicants who are corporations doing business in Tennessee, every applicant shall have submitted, to the Board Administrative Office, evidence of good moral character. Such evidence shall consist of two (2) recent (within the preceding 12 months) original letters, attesting to the applicant's personal character and professional ethics.
- (7) Applicants who are corporations doing business in Tennessee shall submit a certified copy or a notarized photocopy of their corporate charter and shall submit a statement identifying the corporation's registered agent for service of process.
- (8) An applicant shall disclose the circumstances surrounding any of the following concerning himself and all individuals identified by the information provided pursuant to paragraph (5) of this rule:
 - (a) Conviction of any criminal offense of any country, state or municipality except minor traffic offenses, conviction for any sexual related offense, and conviction for prostitution or sexual misconduct offenses. A conviction for prostitution or sexual misconduct offenses shall disqualify an applicant from receiving a license. A conviction for a felony under the laws of Tennessee may disqualify an applicant from receiving a license.

(Rule 0870-1-.05, continued)

- (b) The denial of professional licensure/certification application by any other state or the discipline of licensure/ certification in any state.
 - (c) Loss or restriction of licensure/certification.
 - (d) Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory common or case law.
- (9) An applicant shall cause to be submitted to the Board's Administrative Office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.
 - (10) An applicant shall submit the establishment application fee and state regulatory fee as provided in rule 0870-1-.06.
 - (11) When necessary, all required documents shall be translated into English and such translation and original documents certified as to authenticity by the issuing source. Both versions must be submitted.
 - (12) All applications shall be sworn to and signed by the applicant and notarized.
 - (13) All documents submitted for licensure purposes become the property of the State of Tennessee and will not be returned.
 - (14) The application form is not acceptable if any portion has been executed and dated prior to one (1) year before receipt by the Board Administrative Office.
 - (15) An establishment license may be denied, conditioned, restricted and/or disciplined for the same causes and pursuant to the same procedures as a massage therapist's license.
 - (16) Application review and licensure decisions shall be governed by rule 0870-1-.07.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-18-104, 63-18-105, 63-18-108, and 63-18-111.

Administrative History: Original rule filed November 26, 1996; effective February 9, 1997. Amendment filed November 12, 1999; effective January 26, 2000. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed June 15, 2004; effective August 29, 2004. Amendment filed December 29, 2004; effective March 14, 2005. Amendments filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed February 2, 2007; effective April 18, 2007.

0870-1-.06 FEES.

- (1) The fees authorized to be established by the Board and necessary to the operation of the Board are established as follows:
 - (a) Individual Application Fee - A non-refundable fee to be paid by all applicants for a massage therapist's license including those seeking licensure by reciprocity. This fee includes an initial licensure fee and the state regulatory fee. In cases where an applicant is denied licensure or the application file closes due to abandonment, only the initial licensure fee will be refundable upon request. The state regulatory fee is not refundable.

(Rule 0870-1-.06, continued)

- (b) Establishment Application Fee - A non-refundable fee to be paid by all applicants who wish to license a massage establishment. This fee includes an initial licensure fee and the state regulatory fee. In cases where an applicant is denied licensure or the application file closes due to abandonment, only the initial licensure fee will be refundable upon request. The state regulatory fee is not refundable.
- (c) Biennial Licensure Renewal Fee - A non-refundable fee to be paid prior to the issuance of the renewal certificate. This fee must be received on or before the expiration date of the license.
- (d) Initial License Fee - A fee to be paid at the time of application for initial licensure.
- (e) Late Renewal Fee - A non-refundable fee to be paid when a licensee fails to renew on or before the license's expiration date. This is an additional fee which must be submitted with the biennial licensure renewal fee and state regulatory fee.
- (f) Replacement License Fee - A non-refundable fee to be paid when an individual requests a replacement for a lost or destroyed "artistically designed" wall license or renewal certificate, or when a licensed massage establishment requests a change of name and/or address, pursuant to rule 0870-1-.15 (3).
- (g) State Regulatory Fee - A non-refundable fee to be paid by all individuals at the time of application and with all renewal applications.
- (h) Reinspection Fee - A non-refundable fee to be paid when an establishment does not pass inspection, or fails to allow an inspection to be scheduled, or does not appear for a scheduled inspection.

(2) Fee Schedule:	Amount
(a) Individual Application Fee - Which includes:	
1. Application Fee	\$ 25.00
2. Initial Licensure Fee	\$ 75.00
3. State Regulatory Fee	\$ 10.00
Total application fee due at the time of application.	\$110.00
(b) Establishment Application Fee - Which includes:	
1. Application Fee	\$ 25.00
2. Initial Licensure Fee	\$ 50.00
3. State Regulatory Fee	<u>\$ 10.00</u>
Total application fee due at the time of application.	\$ 85.00
(c) Individual Biennial Licensure Renewal Fee	\$100.00
(d) Establishment Biennial Licensure Renewal Fee	\$ 50.00
(e) Late Renewal Fee	\$100.00

(Rule 0870-1-.06, continued)

- (f) Replacement License Fee \$ 25.00
 - (g) State Regulatory (biennial) \$ 10.00
 - (h) Reinspection Fee \$ 75.00
- (3) Fees may be paid in the following manner:
- (a) All fees paid by money order, certified, personal, or corporate check must be submitted to the Board's Administrative Office and made payable to the Tennessee Massage Licensure Board.
 - (b) Fees may be paid by Division-approved credit cards or other Division-approved electronic methods.

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-1-103, 63-1-107, 63-1-108, 63-1-112, 63-18-104, 63-18-105, 63-18-106, and 63-18-111. **Administrative History:** Original rule filed March 25, 1996; effective June 8, 1996. Repeal and new rule filed November 13, 1996; effective January 27, 1997. Amendment filed August 10, 1999; effective October 24, 1999. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed November 14, 2000; effective January 29, 2001. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed September 17, 2002; effective December 1, 2002. Amendment filed December 29, 2004; effective March 14, 2005. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006.

0870-1-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.

- (1) Completed applications received in the Board Administrative Office by the fifth (5th) day of any month shall be submitted to a member of the Board, the Board's consultant or designee for review. An initial determination as to acceptance or denial of the application shall be made prior to the end of the month in which the application is received. Each member of the Board and the Board's consultant or designee is vested with the authority to make these initial determinations.
- (2) A license may be issued pursuant to the initial determination made by the Board member or the Board's consultant or designee reviewing the application. However, such determination shall not become fully effective until such time as the full Board ratifies it.
- (3) If an application is incomplete when received by the Board Administrative Office or the reviewing Board member or the Board's consultant or designee determines additional information is required from an applicant before an initial determination can be made, the Board Administrative Office shall notify the applicant of the information required. The applicant shall cause the requested information to be received by the Board Administrative office on or before the sixtieth (60th) day after receipt of the notification.
 - (a) Such notifications shall be sent certified mail return receipt requested from the Board Administrative Office.
 - (b) If the requested information is not timely received, the application shall be closed and the applicant notified. No further Board action shall take place until a new application is received pursuant to the rules governing the licensure process, including another payment of all fees.
- (4) If a completed application is initially denied by the reviewing Board member or the Board's Consultant or designee, the applicant shall be informed of that initial decision and that final

(Rule 0870-1-.07, continued)

determination shall be made by the Board at its next meeting. If the Board ratifies the initial denial, the action shall become final and the following shall occur:

- (a) A notification of the denial shall be sent by the Board Administrative Office by certified mail return receipt requested. Specific reasons for denial will be stated, such as incomplete information, unofficial records, examination failure, or matters judged insufficient for certification, and such notification shall contain all the specific statutory or rule authorities for the denial.
- (b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedure Act (T.C.A. §§ 4-5-101, et seq.) to contest the denial and the procedure necessary to accomplish that action.
 - 1. An applicant has a right to a contested case hearing only if the licensure denial was based on subjective or discretionary criteria.
 - 2. An applicant may be granted a contested case hearing if licensure denial is based on an objective, clearly defined criteria only if after review and attempted resolution by the Board's Administrative staff, the licensure application cannot be approved and the reasons for continued denial present a genuine issue of fact and/or law which is appropriate for appeal.
- (5) The initial determination procedures of this rule will not apply if the full Board reviews and makes final determination on the application during its meetings.
- (6) Any applicant who has successfully complied with all requirements of the rules governing the licensure process shall be entitled to its issuance with the following exceptions:
 - (a) Applicants who by virtue to any criteria in the area of mental, physical, moral or educational capabilities, as contained in the application and review process which indicates a potential risk to the public health, safety and welfare may be required to present themselves to the Board or selected member(s) of the Board for an interview before final approval may be granted.
 - (b) The issuance of the license applied for may be withheld, restricted or conditioned for violation of the provisions of T.C.A. § 63-18-108 and any rules promulgated pursuant thereto or failure to fully comply with all application requirements.
- (7) If the Board finds it has erred in the issuance of any type of license, the Board will give written notice by certified mail of its intent to revoke the license. The notice will allow the applicant the opportunity to meet the requirements for licensure within thirty (30) days from the date of receipt of the notification. If the applicant does not concur with the stated reason and the intent to revoke the license, the applicant shall have the right to proceed according to rule 0870-1-.07(4)(b).
- (8) Abandonment of Application
 - (a) The Board's Administrator is authorized to deem an application closed by abandonment, or require updated documentation, if the application has not been completed by the applicant within the times required by rules of the Board.
 - (b) An application submitted subsequent to the determination of abandonment of a prior application shall be treated as a new application.

(Rule 0870-1-.07, continued)

- (c) Applications that are deemed abandoned will require the applicant to submit a new application, new application fee, and all new supporting documents.

Authority: T.C.A. §§4-5-102(3), 4-5-202, 4-5-204, 63-18-104, 63-18-105, 63-18-108, 63-18-109, 63-18-111, and 63-18-112. **Administrative History:** Original rule filed November 13, 1996, effective January 27, 1997. Amendment filed June 15, 2004; effective August 29, 2004. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed May 10, 2007; effective July 24, 2007.

0870-1-.08 EXAMINATION.

- (1) With the exception of applicants qualifying pursuant to Rule 0870-1-.04 (1) (m) 2. (ii) or Rule 0870-1-.05, all persons intending to apply for licensure must successfully complete one (1) of the competency examinations adopted by the Board pursuant to this Rule as a prerequisite to licensure. Such examinations must be completed prior to application for licensure. Evidence of successful completion must be submitted by the examining agency directly to the Board Administrative Office as part of the application process contained in Rule 0870-1-.04.
- (2) Competency Examination - The Board accepts successful completion, as determined by the examining agency, of any one (1) of the following examinations:
 - (a) The N.C.B.T.M.B.'s and/or its successor organization's National Certification Examination. - Application for, proof of having successfully completed a massage, bodywork, and/or somatic therapy curriculum(s) as provided in subparagraph 0870-1-.04 (1) (f), and fees necessary to take the National Certification Examination must be sent to the N.C.B.T.M.B. and not to the Board.
 - (b) Any other Board-approved examination - Application for, proof of having successfully completed a massage, bodywork, and/or somatic therapy curriculum(s) as provided in subparagraph 0870-1-.04 (1) (f), and fees necessary to take a Board-approved examination must be sent to such exam's testing agency and not to the Board.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-18-104, 63-18-105, 63-18-111, 63-18-112, and 63-18-116. **Administrative History:** Original rule filed April 17, 2003; effective July 1, 2003. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed May 10, 2007; effective July 24, 2007.

0870-1-.09 LICENSURE RENEWAL. All licensed massage therapists and massage establishments must biennially renew their licenses to be able to legally continue in practice. Licensure renewal is governed by the following:

- (1) Renewal application
 - (a) The due date for certification renewal is the last day of the month in which a licensee's birthday falls pursuant to the Division's "biennial renewal system" as contained on the expiration date on the renewal certificate.
 - (b) Methods of Renewal
 - 1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.tennesseeanytime.org

(Rule 0870-1-.09, continued)

2. Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.
- (c) To be eligible for renewal a licensee must submit to the Division, on or before the expiration date, all of the following:
 1. A completed and signed renewal application form; and
 2. The renewal and state regulatory fees as provided in rule 0870-1-.06.
- (d) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-1-.10.
- (e) Anyone submitting a signed renewal form or letter which is found to be untrue is subject to disciplinary action pursuant to T.C.A. § 63-18-108.
- (2) Reinstatement of an Expired License - Reinstatement of a license that has expired may be accomplished upon meeting the following conditions:
 - (a) At the discretion of the Board, either appear before it or submit a notarized statement setting forth the cause for failure to renew; and
 - (b) Payment of all past due renewal and the late renewal fees; and
 - (c) Submission of proof of compliance with continuing education requirements of rule 0870-1-.12.
- (3) Renewal issuance decisions pursuant to this rule may be made administratively, or upon review by the Board or the Board's consultant.
- (4) No application for renewal of an establishment license or reinstatement of an expired establishment license shall be considered unless the establishment has passed its most recent inspection.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-18-104, 63-18-106, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006.

0870-1-.10 REPEALED.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-18-104, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed March 24, 2006; effective June 7, 2006. Repeal filed June 16, 2006; effective August 30, 2006.

0870-1-.11 RETIREMENT, REINSTATEMENT, INACTIVATION, AND REACTIVATION OF LICENSURE.

- (1) Licensees who wish to retain their licenses but not actively practice may avoid compliance with the licensure renewal process and continuing education requirements by doing the following:
 - (a) Obtain from, complete and submit to the Board Administrative Office an affidavit of retirement form.
 - (b) Submit any documentation which may be required by the form to the Board Administrative Office.
- (2) Any licensee whose individual license has been retired may reenter active practice by doing the following:
 - (a) Submit a reinstatement application to the Board Administrative Office; and
 - (b) Pay the licensure renewal fee and state regulatory fee as provided in rule 0870-1-.06.
 - (c) If requested, after review by the Board a designated Board member or the Board consultant, appear before the Board, a Board member or the Board consultant for an interview regarding continued competence in the event of licensure retirement in excess of two (2) years.
 - (d) Comply with the continuing education provisions of rule 0870-1-.12 applicable to reactivation of retired licenses.
- (3) Establishments that wish to retain their licenses but not operate as an establishment may avoid compliance with the licensure renewal process requirements by doing the following:
 - (a) Obtain from, complete and submit to the Board Administrative Office a request for establishment inactivation form.
 - (b) Submit any documentation which may be required by the form to the Board Administrative Office.
- (4) Any establishment whose license has been placed in inactive status may activate such license by doing the following:
 - (a) Submit a reactivation application to the Board Administrative Office; and
 - (b) Pay the establishment biennial licensure renewal fee and state regulatory fee as provided in rule 0870-1-.06, and
 - (c) No application for reactivation of an establishment license shall be considered unless the establishment has passed its most recent inspection.
- (5) Application review and decisions required by this rule shall be governed by rule 0870-1-.07.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-111, 63-18-104, 63-18-106, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed October 4, 2004; effective December 18, 2004. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006.

0870-1-.12 CONTINUING EDUCATION.

- (1) Massage Therapy Continuing Education is considered to be those preplanned/formalized activities with written learning objectives that are directed at developing and enhancing an individual's massage therapy knowledge base, or relevant skills. Except for courses offered to meet the requirements of subparagraph (2) (e), these activities may be presented in any format authorized by subparagraph (4) (d) and part (4) (b) 5. oriented toward enhancement of massage therapy and for the purpose of accomplishing specific written objectives.
- (2) Continuing Education - Hours Required
 - (a) Courses to be offered for credit toward the required continuing education hours must, unless otherwise provided, receive approval from the Board.
 - (b) Two (2) year cycles:
 1. January 1, 2003 to December 31, 2004
 2. January 1, 2005 to December 31, 2006
 3. January 1, 2007 to December 31, 2008
 4. January 1, 2009 to December 31, 2010
 5. January 1, 2011 to December 31, 2012
 6. January 1, 2013 to December 31, 2014
 7. January 1, 2015 to December 31, 2016
 - (c) Every person who receives a license as a massage therapist after January 1, 2003 will have his or her required continuing education hours pro-rated, pursuant to the chart in subparagraph (2) (d), over the remaining months of the continuing education cycle in which the person became licensed. Every fraction of an hour resulting from any such pro-rating shall be rounded up to the next whole hour and to a minimum of four (4) hours. Any such person shall have to obtain one (1) and one/twenty fourth (1/24) hours for every month remaining in the continuing education cycle in which he or she became licensed but those hours won't be due until the final December 31st of the cycle. [For example a person who becomes licensed in June of the first year of a continuing education cycle (January 1st of one year through December 31st of the following year) will be prorated over the 18 months left on the continuing education cycle from July through December of the following year requiring the person to obtain 18 and ¾ hours of continuing education (rounded up to 19 hours) which are due on December 31st of the following year.] Every person who is required, pursuant to the pro-rated system, to obtain only four (4) hours of continuing education must obtain those hours in the subject areas required by subparagraphs (2) (e) and (2) (f).
 - (d) New Licensee Pro-Ration Chart - Persons who become licensed will have their required continuing education hours pro-rated over the remaining months of the two (2) year cycle in which they become licensed according to the following chart:

First Year of the Cycle		Second Year of the Cycle	
Month Licensed	Hours Required	Month Licensed	Hours Required

(Rule 0870-1-.12, continued)

January	25	January	13
February	24	February	12
March	23	March	11
April	22	April	10
May	21	May	9
June	20	June	8
July	19	July	7
August	18	August	6
September	17	September	5
October	16	October	4
November	15	November	4
December	14	December	4

(e) Two (2) hours of the twenty-five (25) hour requirement shall pertain to federal and Tennessee statutes and rules concerning massage therapists and establishments. Providers must comply with all the following before the course can be presented:

1. The provider must submit the course materials for review and approval pursuant to subparagraph (4) (c) of this rule; and
2. The course, including multi-media courses, must be presented in a lecture format with successful completion of a written post experience examination to evaluate material retention; and
3. The provider must submit documentation sufficient to show that the information to be disseminated in the course is accurate and current and is in compliance with paragraph (1) and subparagraph (4) (c) of this rule.

(f) Two (2) hours of the twenty-five (25) hour requirement shall pertain to the management of practicing massage therapy, or to professional ethics, or to substance abuse.

(g) The Board approves courses for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once toward the required two (2) year hourly total regardless of the number of times the course is attended or completed by any individual licensee.

(3) Continuing Education - Proof of Compliance

- (a) The due date for attendance and completion of the required continuing education hours is December 31st.
- (b) Each massage therapist must, on the biennial licensure renewal form, attest to timely attendance and completion of the required continuing education hours.
- (c) Each Massage therapist must retain independent documentation of attendance and completion of all continuing education courses. This documentation must be retained for a period of four (4) years. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process.

(4) Continuing Education - Course Approval

- (a) Courses to be offered for credit toward the required continuing education hours must, unless otherwise provided, receive approval from the Board.

(Rule 0870-1-.12, continued)

(b) The following sponsors or courses need not receive prior approval and shall constitute Board approved continuing education courses:

1. Associations, corporations, or organizations authorized as a provider by the National Certification Board for Therapeutic Massage and Bodywork (N.C.B.T.M.B.) or the National Commission for Certifying Agencies (N.C.C.A.). Provided however, any provider approved by any organization identified in this part who intends to include in their course the hours necessary to meet the requirements of subparagraph (2) (e) of this rule must also comply with all of the following before those hours can be presented:
 - (i) The provider must submit the course materials for those hours for review and approval pursuant to subparagraph (4) (c) of this rule; and
 - (ii) Those hours, including multi-media courses, must be presented in a lecture format with successful completion of a written post experience examination to evaluate material retention; and
 - (iii) The provider must submit documentation sufficient to show that the information to be disseminated in those hours is accurate and current and is in compliance with paragraphs (1) and subparagraph (4) (c) of this rule.
2. American Heart Association course in CPR.
3. American Massage Therapy Association.
4. American Red Cross courses in HIV, CPR, or Standard First Aid.
5. Colleges or universities accredited by the United States Department of Education as described in paragraph (1).
6. Formal educational courses relating directly to the theory or clinical application of massage therapy sponsored by an accredited college/university or institutions approved by the Tennessee Higher Education Commission, Board of Regents or its equivalent in another state(s). If such course is taken for or assigned quarter or semester credit hours, three (3) semester hours or equivalent quarter hours shall be equivalent to fifteen (15) continuing education hours. No credits will be counted for courses failed.
7. Tennessee Massage Therapy Association.

(c) If a sponsor is unable to obtain or chooses not to obtain approval pursuant to subparagraph (4) (b) of this rule, the sponsor may request Board approval by submitting the following information to the Board Administration Office at least forty-five (45) days prior to the proposed or scheduled date of the course:

1. The written learning objectives of the course.
2. A course description or outline.
3. Names of all lecturers.
4. Brief resume of all lecturers including experience or training in the subject matter being taught.

(Rule 0870-1-.12, continued)

5. Number of hours of educational credit requested.
 6. Proposed or scheduled date of course.
 7. Copies of materials to be utilized in the course.
 8. How verification of attendance is to be documented.
- (d) Individual licensees may receive continuing education credit for courses presented out of state with the Board's subsequent approval, if the course is presented during the continuing education cycle in which the licensee is requesting credit be applied, upon submitting the following to the Board Administrative Office:
1. The written learning objectives of the course.
 2. A course description or outline.
 3. Names of all lecturers.
 4. Number of hours of educational credit requested.
 5. Date of course.
 6. Copies of materials to be utilized in the course, upon a Board request.
 7. The course provider's telephone number.
 8. The course provider's pre-printed brochure, agenda or other materials which describe and/or advertise the course.
- (e) Continuing Education courses may be presented in any of the following formats:
1. Lecture.
 2. Multi-media courses - with successful completion of a written post experience examination to evaluate material retention. Multi-media courses include, but are not limited to, audio, audiovisual, closed circuit television, and the Internet.
 3. Correspondence - with successful completion of a written post experience examination to evaluate material retention.
 4. Any combination of the above.
- (f) Record keeping. The sponsor of each continuing education program shall keep detailed records of the following:
1. The date and location of the program presentation;
 2. The names of each instructor or discussion leader;
 3. A list of the certificate, license and permit holders attending each program presentation; and
 4. A written outline of the program presentation.

(Rule 0870-1-.12, continued)

- (g) Each sponsor of a continuing education course must provide a certificate to each participant. Records maintained by the program sponsor for the purpose of verifying attendance and compliance of the continuing education obligation must have at least the following information: Licensee's name, license number, total number of continuing education clock hours awarded, name of sponsor, program title, and date(s).
 - (h) The records required by subparagraph (f) of this rule shall be retained for a period of five (5) years following the date of each program presentation.
 - (i) Approval of any continuing education program may be withdrawn by the board if the sponsor of such program fails to comply with the provisions of this chapter.
- (5) Waiver of Continuing Education
 - (a) The Board may grant a waiver of the need to attend and complete the required hours of continuing education if it can be shown to the Board that the failure to comply was not attributable to or was beyond the physical capabilities of the person seeking the waiver.
 - (b) Waivers will be considered only on an individual basis and may be requested by submitting the following items to the Board Administrative Office:
 - 1. A written request for a waiver which specifies what requirement is sought to be waived and written and signed explanation of the reasons for the request.
 - 2. Any documentation which supports the reason for the waiver requested or which is subsequently requested by the Board.
 - (c) A waiver approved by the Board is effective for only the renewal period for which the waiver is sought unless otherwise specified in writing by the Board.
 - (d) The Board Consultant is authorized to grant or deny requests for waivers subject to subsequent Board ratification.
- (6) Continuing Education for Reactivation or Reinstatement of Retired, Expired, or Revoked License.
 - (a) Any massage therapist who applies for reactivation or reinstatement of a license which has been retired, or has expired, or has been revoked for failure to complete continuing education requirements for over two (2) years must submit along with the reactivation or reinstatement request, proof which indicates the attendance and completion of twenty (20) hours of Board approved massage therapy related continuing education. The continuing education must have been earned in the twelve (12) months preceding application for reactivation or reinstatement.
 - (b) The continuing education hours obtained as a prerequisite for licensure reactivation or reinstatement may not be counted toward the continuing education hours required to be obtained before the end of the renewal period of reactivation or reinstatement.
 - (c) The Board may grant a waiver of the continuing education requirements for reactivation or reinstatement of a retired, expired, or revoked license as provided in paragraph (5) of this rule.
 - (d) The Board is authorized to grant or deny requests for waivers.
- (7) Violations

(Rule 0870-1-.12, continued)

- (a) Any massage therapist who falsely attests to attendance and completion of the required hours of continuing education may be subject to disciplinary action pursuant to T.C.A. § 63-18-108.
- (b) Any massage therapist who fails to obtain the required continuing education hours may be subject to disciplinary action pursuant to T.C.A. § 63-18-108.
- (c) Education hours obtained as a result of compliance with the terms of any disciplinary action shall not be counted toward the continuing education hours required to be obtained in any renewal period.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed August 21, 1998; effective November 4, 1998. Amendment filed November 12, 1999; effective January 26, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed May 20, 2003; effective August 3, 2003. Amendment filed December 16, 2005; effective March 1, 2006. Amendments filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Withdraw of rule 0870-1-.12(4)(b)1 filed and effective August 15, 2006. Amendment filed February 2, 2007; effective April 18, 2007. Amendment filed May 10, 2007; effective July 24, 2007. Amendment filed April 30, 2008; effective July 14, 2008.

0870-1-13 DISCIPLINARY GROUNDS, ACTIONS, AND CIVIL PENALTIES.

- (1) Upon a finding by the Board that a licensee or registrant has violated any provision of the Tennessee Massage Therapist Practice (T.C.A. §§ 63-18-101, et seq.) or the rules promulgated pursuant thereto, the Board may impose any of the following actions separately or in any combination which is deemed appropriate to the offense:
 - (a) Private Censure - This is a written action issued for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.
 - (b) Public Censure or Reprimand - This is a written action issued for one time and less severe violations. It is a formal disciplinary action.
 - (c) Probation - This is a formal disciplinary action which places a licensee or registrant on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict activities during the probationary period.
 - (d) Suspension - This is a formal disciplinary action which suspends a licensee's right to practice for a fixed period of time. It contemplates the reentry into practice under the license or registration previously issued.
 - (e) Revocation for Cause. This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the license previously issued. The Board, in its discretion, may allow reinstatement of a revoked license upon conditions and after a period of time it deems appropriate. No petition for reinstatement and no new application for licensure from a person whose license was revoked shall be considered prior to the expiration of at least one year unless otherwise stated in the Board's revocation order.
 - (f) Conditions - Any action deemed appropriate by the Board to be required of a disciplined licensee during any period of probation or suspension or as a prerequisite to the lifting of probation or suspension or the reinstatement of a revoked license.

(Rule 0870-1-.13, continued)

- (g) Civil penalty - A monetary disciplinary action assessed by the Board pursuant to paragraph (4) of this rule.
 - (h) Once ordered, probation, suspension, revocation, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the licensee petitions, pursuant to paragraph (2) of this rule, and appears before the Board after the period of initial probation, suspension, revocation, or other conditioning has run and all conditions placed on the probation, suspension, revocation, have been met, and after any civil penalties assessed have been paid.
- (2) Order of Compliance - This procedure is a necessary adjunct to previously issued disciplinary orders and is available only when a petitioner has completely complied with the provisions of a previously issued disciplinary order, including an unlicensed practice civil penalty order, and wishes or is required to obtain an order reflecting that compliance.
- (a) The Board will entertain petitions for an Order of Compliance as a supplement to a previously issued order upon strict compliance with the procedures set forth in subparagraph (b) in only the following three (3) circumstances:
 - 1. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance; or
 - 2. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued lifting a previously ordered suspension or probation; or
 - 3. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reinstating a license previously revoked.
 - (b) Procedures
 - 1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Board's Administrative Office that shall contain all of the following:
 - (i) A copy of the previously issued order; and
 - (ii) A statement of which provision of subparagraph (a) the petitioner is relying upon as a basis for the requested order; and
 - (iii) A copy of all documents that prove compliance with all the terms or conditions of the previously issued order. If proof of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed statements from every individual the petitioner intends to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.
 - 2. The Board authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:

(Rule 0870-1-.13, continued)

- (i) Certify compliance and have the matter scheduled for presentation to the Board as an uncontested matter; or
 - (ii) Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven and notify the petitioner of what provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.
3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
4. If the Board finds that the petitioner has complied with all the terms of the previous order an Order of Compliance shall be issued.
5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order of Compliance
Tennessee Massage Licensure Board

Petitioner's Name: _____
Petitioner's Mailing Address: _____

Petitioner's E-Mail Address: _____
Telephone Number: _____
Attorney for Petitioner: _____
Attorney's Mailing Address: _____

Attorney's E-Mail Address: _____
Telephone Number: _____

The petitioner respectfully represents, as substantiated by the attached documentation, that all provisions of the attached disciplinary order have been complied with and I am respectfully requesting: (circle one)

1. An order issued reflecting that compliance; or
2. An order issued reflecting that compliance and lifting a previously ordered suspension or probation; or
3. An order issued reflecting that compliance and reinstating a license previously revoked.

Note - You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed

(Rule 0870-1-.13, continued)

statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the ____ day of _____, 20____.

Petitioner's Signature

- (3) Order Modifications - This procedure is not intended to allow anyone under a previously issued disciplinary order, including an unlicensed practice civil penalty order, to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order. It is also not intended to allow a petition for a lesser disciplinary action, or civil penalty other than the one(s) previously ordered. All such provisions of Board orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.). This procedure is not available as a substitute for reconsideration and/or appeal and is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. It is also not available for those who have accepted and been issued a reprimand.

- (a) The Board will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only when the petitioner can prove that compliance with any one or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term "impossible" does not mean that compliance is inconvenient or impractical for personal, financial, scheduling or other reasons.

(b) Procedures

1. The petitioner shall submit a written and signed Petition for Order Modification on the form contained in subparagraph (c) to the Board's Administrative Office that shall contain all of the following:
 - (i) A copy of the previously issued order; and
 - (ii) A statement of why the petitioner believes it is impossible to comply with the order as issued; and
 - (iii) A copy of all documents that proves that compliance is impossible. If proof of impossibility of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed and notarized statements from every individual the petitioner intends to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.
2. The Board authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:
 - (i) Certify impossibility of compliance and forward the petition to the Office of General Counsel for presentation to the Board as an uncontested matter; or

(Rule 0870-1-.13, continued)

- (ii) Deny the petition, after consultation with legal staff, if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.
3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
4. If the petition is granted a new order shall be issued reflecting the modifications authorized by the Board that it deemed appropriate and necessary in relation to the violations found in the previous order.
5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes impossibility of compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. §4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order Modification
Tennessee Massage Licensure Board

Petitioner's Name: _____

Petitioner's Mailing Address: _____

Petitioner's E-Mail Address: _____

Telephone Number: _____

Attorney for Petitioner: _____

Attorney's Mailing Address: _____

Attorney's E-Mail Address: _____

Telephone Number: _____

The petitioner respectfully represents that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:

Note - You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony

(Rule 0870-1-.13, continued)

other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the ____ day of _____, 20____.

Petitioner's Signature

(4) Civil Penalties

(a) Purpose-The purpose of this rule is to set out a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to T.C.A. § 63-1-134.

(b) Schedule of Civil Penalties

1. A Type A Civil Penalty may be imposed whenever the Board finds a person who is required to be licensed, certified, permitted, or registered by the Board, guilty of a willfully and knowing violation of the Massage Therapy Practice Act, or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be, an imminent, substantial threat to the health, safety and welfare of an individual clientele or the public. For purposes of this section, willfully and knowingly practicing massage therapy or operating a massage establishment without a license, from the Board is one of the violations of the Massage Therapy Practice Act for which a Type A Civil Penalty is assessable.
2. A Type B Civil Penalty may be imposed whenever the Board finds the person required to be licensed, certified, permitted, or registered by the Board is guilty of a violation of the Massage Therapy Practice Act or regulations promulgated pursuant thereto in such manner as to impact directly on the care of clients or the public.
3. A Type C Civil Penalty may be imposed whenever the Board finds the person required to be licensed, certified, permitted, or registered by the Board is guilty of a violation of the Massage Therapy Practice Act or regulations promulgated pursuant thereto, which are neither directly detrimental to the patients or public, nor directly impact their care, but have only an indirect relationship to clientele care or the public.

(c) Amount of Civil Penalties.

1. Type A Civil Penalties shall be assessed in the amount of not less than \$500 and not more than \$1000.
2. Type B Civil Penalties may be assessed in the amount of not less than \$100 and not more than \$500.
3. Type C Civil Penalties may be assessed in the amount of not less than \$50 and not more than \$100.

(d) Procedures for Assessing Civil Penalties

1. The Division of Health Related Boards may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Division

(Rule 0870-1-.13, continued)

- may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.
2. Civil Penalties may also be initiated and assessed by the Board during consideration of any Notice of Charges. In addition, the Board may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the Division.
 3. In assessing the civil penalties pursuant to these rules the Board may consider the following factors:
 - (i) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (ii) The circumstances leading to the violation;
 - (iii) The severity of the violation and the risk of harm to the public;
 - (iv) The economic benefits gained by the violator as a result of non-compliance; and
 - (v) The interest of the public.
 4. All proceedings for the assessment of civil penalties shall be governed by the contested case provision of Title 4, Chapter 5, T.C.A.
 - (5) All contested case hearings before the Board shall be conducted pursuant to the Uniform Rules of Procedures for Contested Case Hearings Before State Administrative Agencies, Rules Chapter 1360-4 of The Official Compilation of Rules and Regulations of the State of Tennessee.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-217, 4-5-223, 63-18-106, 63-18-108, 63-18-109, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed August 2, 2004; effective October 16, 2004. Amendment filed March 24, 2006; effective June 7, 2006.

0870-1-.14 LICENSE.

- (1) Display of License - Every person who has received a license from the Board in this state shall display that license in a conspicuous place in his/her office/establishment and produce the license when required by the Board or its authorized representatives.
- (2) Replacement License - A licensee whose "artistically designed" license has been lost or destroyed may be issued a replacement license upon receipt of a written request in the Board Administrative Office. Such request shall be accompanied by a notarized passport type photograph and an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original license and the required fee pursuant to rule 0870-1-.06.
- (3) Requests for Certificates of Fitness for licensees or registrants desiring to practice in another state must be made in writing to the Board Administrative Office.
- (4) Requests for verification of license must be made in writing to the Board Administrative Office.

(Rule 0870-1-.14, continued)

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-106, 63-18-104, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed March 24, 2006; effective June 7, 2006.

0870-1-.15 CHANGE OF NAME AND/OR ADDRESS.

- (1) Change of Name - A licensee shall notify the Board in writing within 30 days of a name change and will provide both the old and new names. A request for name change must also include a copy of the official document involved and reference the individual's or establishment's, profession, social security, and license numbers.
- (2) Change of Address - Each licensee who has had a change of address or place of employment, shall file in writing with the board his/her current address, giving both old and new addresses. Such requests shall be received in the Board Administrative Office no later than 30 days after such change is effective and must reference the individual's or the establishment's name, social security number, and certification number.
- (3) Change of Establishment Name and/or Address - A licensed massage establishment shall notify the Board in writing each time the establishment's name and/or address changes no later than thirty (30) days after such change is effective. Such notification shall include the establishment's license number, old and new names, old and new addresses, and the replacement license fee, pursuant to rule 0870-1-.06 (1) (f) and 0870-1-.06 (2) (f).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-106, 63-1-108, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed August 10, 1999; effective October 24, 1999. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed March 24, 2006; effective June 7, 2006.

0870-1-.16 OFFICERS, CONSULTANTS, RECORDS, DECLARATORY ORDERS, AND SCREENING PANELS.

- (1) The Board shall annually elect from its members the following officers:
 - (a) Chairperson - who shall, unless absent, preside at the Board meetings.
 - (b) Secretary-Treasurer - who along with the Board Administrator shall be responsible for correspondence from the Board. The secretary shall preside at all meetings at which the chairperson is absent.
- (2) Minutes of the Board meetings and all records, documents, applications, and correspondence will be maintained in the Board Administrative Office.
 - (a) All requests, applications, notices, complaints, other communications and correspondence shall be directed to the Board Administrative Office. Any requests or inquiries requiring a Board decision or official Board action except documents relating to disciplinary actions, declaratory orders or hearing requests must be received fourteen (14) days prior to a scheduled Board meeting and will be retained in the Administrative Office and presented to the Board at the Board meeting. Such documents not timely received shall be set over to the next Board meeting.
 - (b) All records of the Board, except those made confidential by law, are open for inspection and examination, under the supervision of an employee of the Division at the Board Administrative Office during normal business hours.

(Rule 0870-1-.16, continued)

- (c) Copies of public records shall be provided to any person upon payment of a copying fee.
 - (d) All complaints against licensees or establishments should be directed to the Division's Investigations Section and not to the Board or any of its members.
- (3) The Board authorizes its consultant, who may be a Board member or a Board designated licensed massage therapist either serving voluntarily or employed pursuant to contract with the Division, to act, and who is vested with the authority of the Board to do the following acts on behalf of the Board:
 - (a) Review and make initial determinations on licensure, renewal, and reactivation of licensure applications subject to the rules governing those respective applications. A Board designee may also perform these services.
 - (b) Serve as Consultant to the Division to decide the following:
 - 1. Whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division.
 - 2. Whether and under what terms a complaint, case or disciplinary action might be settled. Any matter proposed for settlement must be subsequently ratified by the full Board before it will become effective.
 - 3. Any other matter authorized by these rules or a majority vote of the Board.
- (4) Declaratory Orders - The Board adopts, as if fully set out herein, rule 1200-10-1-.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Board shall be addressed by the Board pursuant to that rule and not by the Division. Declaratory Order Petition forms can be obtained from the Board's administrative office.
- (5) The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.
- (6) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-223, 4-5-224, 63-1-138, 63-18-103, 63-18-108, 63-18-109, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed August 10, 1999; effective October 24, 1999. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006.

0870-1-.17 ADVERTISING.

- (1) Policy Statement. The lack of sophistication on the part of many members of the public concerning professional massage services, the importance of the interests affected by the choice of a massage therapist or a massage establishment and the foreseeable consequences of unrestricted advertising by massage therapists or on behalf of massage establishments, which is recognized to pose special possibilities for deception, require that special care be taken to avoid misleading the public. The massage therapist and massage

(Rule 0870-1-.17, continued)

establishments must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.

(2) Definitions - as used in this rule the following terms shall have the meanings ascribed to them:

- (a) Advertisement Informational communication to the public in any manner designed to attract public attention to the practice of a Tennessee licensed massage therapist or massage establishment.
- (b) Licensee. Any person holding a license to practice massage therapy or as a massage establishment in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
- (c) Material Fact. Any fact which an ordinary reasonable and prudent person would need to know or rely upon in making an informed decision concerning the choice of practitioners or establishments to serve his or her particular needs.
- (d) Bait and Switch Advertising. An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell or provide. Its purpose is to switch consumers from buying or receiving the advertised merchandise or services, in order to sell or provide something else, usually at a higher fee or on a basis more advantageous to the advertiser.
- (e) Discounted fee. Shall mean a fee offered or charged by a person, organization or establishment for any massage therapy product or service that is less than the fee the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted fee".

(3) Advertising Fees and Services

- (a) Fixed Fees. Fixed fees may be advertised for any service.
 - 1. It is presumed unless otherwise stated in the advertisement that a fixed fee for a service shall include the cost of all professionally recognized components within generally accepted standards that are required to complete the service.
- (b) Ranges of Fees. A range of fees may be advertised for services and the advertisement must disclose the factors used in determining the actual fee, necessary to prevent deception of the public.
- (c) Discount Fees. Discount fees may be advertised if:
 - 1. The discount fee is in fact lower than the licensee's customary or usual fee charged for the service; and
 - 2. The licensee provides the same quality and components of service and material at the discounted fee that are normally provided at the regular nondiscounted fee for that service.

(Rule 0870-1-.17, continued)

- (d) Related Services and Additional Fees. Related services which may be required in conjunction with the advertised service for which additional fees will be charged must be identified as such in any advertisement.
 - (e) Time period of Advertised Fees. Advertised fees shall be honored for those seeking the advertised services during the entire time period stated in the advertisement whether or not the services are actually rendered or completed within that time.
 - 1. If no time period is stated in the advertisement of fees, the advertised fee shall be honored for thirty (30) days from the last date of publication or until the next scheduled publication whichever is later whether or not the services are actually rendered or completed within that time.
- (4) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall constitute unethical and unprofessional conduct, and subject the licensee to disciplinary action pursuant to T.C.A. § 63-18-108.
- (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed, employed or used, or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
 - (b) The misleading use of an unearned or non-health degree in any advertisement.
 - (c) Promotion of a professional service which the licensee knows or should know is beyond the licensee's ability to perform.
 - (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective clientele.
 - (e) Any appeals to an individual's anxiety in an excessive or unfair manner.
 - (f) The use of any personal testimonial attesting to a quality or competence of a service or treatment offered by a licensee that is not reasonably verifiable.
 - (g) Utilization of any statistical data or other information based on past performances for predication of future services, which creates an unjustified expectation about results that the licensee can achieve.
 - (h) The communication of personal identifiable facts, data, or information about a client without first obtaining client consent.
 - (i) Any misrepresentation of a material fact.
 - (j) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
 - (k) Statements concerning the benefits or other attributes of procedures or products that involve significant risks without including:
 - 1. A realistic assessment of the safety and efficiency of those procedures or products; and
 - 2. The availability of alternatives; and

(Rule 0870-1-.17, continued)

3. Where necessary to avoid deception, descriptions or assessment of the benefits or other attributes of those alternatives.
 - (l) Any communication which creates an unjustified expectation concerning the potential results of any treatment.
 - (m) Failure to comply with the rules governing advertisement of fees and services, and advertising records.
 - (n) The use of "bait and switch" advertisements. Where the circumstances indicate "bait and switch" advertising, the board may require the licensee to furnish data or other evidence pertaining to those sales at the advertised fee as well as other sales.
 - (o) Misrepresentation of a licensee's credentials, training, experience or ability.
 - (p) Failure to include the corporation, partnership or individual licensee's name in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all licensees practicing at a particular location shall:
 1. Upon request provide a list of all licensees at that location; and
 2. Maintain and conspicuously display at the licensee's office, a directory listing all licensees practicing at that location.
 - (q) Failure to disclose the fact of giving compensation or anything of value to representative of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.
 - (r) After thirty (30) days, the use of the name of any licensee formerly practicing at or associated with any advertised location or on office signs or buildings. (This rule shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign).
 - (s) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
 - (t) Directly or indirectly offering, giving, receiving or agreeing to receive any fee or other consideration to or from a third party for the referral of a client in connection with the performance of professional services.
- (5) Advertising Records and Responsibility
 - (a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed professional employees acting as an agent of such entity.
 - (b) Any and all advertisement are presumed to have been approved by the licensee names therein.

(Rule 0870-1-.17, continued)

- (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Board or its authorized representative.
 - (d) At the time any type of advertisement is placed, the licensee must possess and reply upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public communication.
- (6) Severability. It is hereby declared that the sections, clauses, sentences and part of these rules are severable, are not matters of mutual essential inducement, and any of them shall be excised if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-18-108, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendments filed March 24, 2006; effective June 7, 2006.

0870-1-.18 CONSUMER RIGHT-TO-KNOW REQUIREMENTS.

- (1) Malpractice reporting requirements. The threshold amount below which medical malpractice judgments, awards or settlements in which payments are awarded to complaining parties need not be reported pursuant to the "Health Care Consumer Right-To-Know Act of 1998" shall be ten thousand dollars (\$10,000).
- (2) Criminal conviction reporting requirements. For purposes of the "Health Care Consumer Right-To-Know Act of 1998", the following criminal convictions must be reported:
 - (a) Conviction of any felony.
 - (b) Conviction or adjudication of guilt of any misdemeanor, regardless of its classification, in which any element of the misdemeanor involves any one or more of the following:
 - 1. Sex.
 - 2. Alcohol or drugs.
 - 3. Physical injury or threat of injury to any person.
 - 4. Abuse or neglect of any minor, spouse or the elderly.
 - 5. Fraud or theft.
 - (c) If any misdemeanor conviction reported under this rule is ordered expunged, a copy of the order of expungement signed by the judge must be submitted to the Department before the conviction will be expunged from any profile.

(Rule 0870-1-.18, continued)

Authority: T.C.A. §§4-5-202, 4-5-204, 63-18-111, 63-18-111, and 63-51-101, et seq. **Administrative History:** Original rule 0870-1-.18 filed March 14, 2000; effective May 28, 2000. Amendment filed March 24, 2006; effective June 7, 2006.

0870-1-.19 PROFESSIONAL ETHICAL STANDARDS.

- (1) The Board requires licensees to uphold professional ethical standards that allow for the proper discharge of their responsibilities to those served, that protect the integrity of the profession, and that safeguard the interest of individual clients. To adhere to these professional ethical standards, licensees will:
 - (a) Accurately inform clients, other health care practitioners, and the public of the scope and limitations of their discipline; and
 - (b) Acknowledge the limitations of and contraindications for massage and bodywork and refer clients to appropriate health professionals; and
 - (c) Avoid any interest, activity or influence which might be in conflict with the licensee's obligation to act in the best interests of the client or the profession; and
 - (d) Comply with all applicable Tennessee statutes and regulations as well as Orders issued by the Board pursuant to its disciplinary and/or declaratory order authority; and
 - (e) Conduct their business and professional activities with honesty and integrity, and respect the inherent worth of all persons; and
 - (f) Consistently maintain and improve professional knowledge and competence, striving for professional excellence through regular assessment of personal and professional strengths and weaknesses and through continued education training; and
 - (g) Exercise the right to refuse to treat any person or part of the body for just and reasonable cause; and
 - (h) Have a sincere commitment to provide the highest quality of care to those that seek their professional services; and
 - (i) Provide draping and treatment in a way that ensures the safety, comfort and privacy of the client; and
 - (j) Provide treatment only where there is reasonable expectation that it will be advantageous to the client; and
 - (k) Refrain, under all circumstances, from initiating or engaging in any sexual conduct, sexual activities, or sexualizing behavior involving a client, even if the client attempts to sexualize the relationship; and
 - (l) Refrain, if the licensees are owners or employees of a massage therapy educational program approved by the Board pursuant to Rule 0870-2-.02, from dating or having a sexual relationship with any student while the student is enrolled, including the period of time between semesters of attendance; and
 - (m) Refrain, if the licensees are owners or employees of a massage therapy educational program approved by the Board pursuant to Rule 0870-2-.02, from soliciting any

(Rule 0870-1-.19, continued)

student to be a client or customer for massage therapy services while the student is enrolled, including the period of time between semesters of attendance; and

- (n) Refrain from providing services when they are either physically or mentally incapable of safely doing so. The term "safely" as used in this rule means safety of the massage therapists and anyone they come in contact with during the course of professional practice; and
- (o) Refuse any gifts or benefits which are intended to influence a referral, decision or treatment that are purely for personal gain and not for the good of the client; and
- (p) Refuse to unjustly discriminate against clients or other health professionals; and
- (q) Represent their qualifications honestly, including their educational achievements and professional affiliations, and provide only those services which they are qualified and licensed to perform; and
- (r) Respect the client's boundaries with regard to privacy, disclosure, exposure, emotional expression, beliefs, the client's autonomy, and the client's reasonable expectations of professional behavior; and
- (s) Respect the client's right to refuse, modify, or terminate treatment regardless of prior consent given; and
- (t) Respect the client's right to treatment with informed and voluntary consent by obtaining and recording informed voluntary written consent of the client, or client's advocate, before performing
 1. therapeutic treatments beyond the normal narrowing of the ear canal and normal narrowing of the nasal passages; and
 2. therapeutic treatments in the oropharynx; and
 3. therapeutic same-gender breast massage; and
- (u) Respect the client's right to treatment with informed and voluntary consent by obtaining and recording informed voluntary written or verbal consent of the client, or client's advocate, before providing treatment other than the treatments identified in subparagraph (1) (q) of this rule; and
- (v) Safeguard the confidentiality of all client information, unless the client provides written permission to release such information; or
 1. when such information is requested during a formal investigation by representatives of the State of Tennessee or other law enforcement agencies; or
 2. when required to do so pursuant to any action in a court of law; or
 3. where required by law to report to state or federal agencies; and
- (w) Not practice in an unlicensed massage establishment. A massage therapist may not be prosecuted under this rule if he/she has a written statement, signed by the establishment owner and notarized prior to the date of the therapist's employment, stating that the establishment is licensed as a massage establishment.

(Rule 0870-1-.19, continued)

- (2) Violation of any provision listed in paragraph (1) is grounds for disciplinary action, as provided in Rule 0870-1-.13.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-108, and 63-18-111. **Administrative History:** Original rule filed May 30, 2003; effective August 13, 2003. Amendment filed October 4, 2004; effective December 18, 2004. Amendment filed March 24, 2006; effective June 7, 2006. Amendments filed June 16, 2006; effective August 30, 2006. Amendment filed February 2, 2007; effective April 18, 2007.